

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH L. AGOSTINI, Individually and as
Co-Executor of the Estate of
JORDYN AGOSTINI, Deceased,
318 Netherington Drive
Broomall, Pennsylvania 19008

and

SUELLEN AGOSTINI, Individually and as
Co-Executor of the Estate of
JORDYN AGOSTINI, Deceased,
318 Netherington Drive
Broomall, Pennsylvania 19008

and

DOUGLAS J. HENEGAR, Individually and as
Natural Father of
KYLE HENEGAR, Deceased,
1383 Rose Court
Melbourne, Florida 32935

and

SHARON K. HENEGAR, Individually and as
Administratrix of the Estate of
KYLE HENEGAR, Deceased,
1383 Rose Court
Melbourne, Florida 32935

and

DOUGLAS J. HENEGAR, Individually and as
Natural Father of
KRISTOPHER HENEGAR, Deceased,
1383 Rose Court
Melbourne, Florida 32935

and

CIVIL ACTION NO.

SHARON K. HENEGAR, Individually and as	:
Administratrix of the Estate of	:
KRISTOPHER HENEGAR, Deceased,	:
1383 Rose Court	:
Melbourne, Florida 32935	:
	:
Plaintiffs,	:
	:
v.	:
	:
UNITED STATES OF AMERICA	:
NATIONAL TRANSPORTATION SAFETY	:
BOARD	:
490 L'Enfant Plaza, SW	:
Washington, DC 20594	:
	:
Defendant.	:

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act, 5 U.S.C. 552)

The Parties

1. Plaintiffs, Joseph L. Agostini, individually and as Co-Executor of the Estate of Jordyn Agostini; Suellen Agostini, individually and as Co-Executor of the Estate of Jordyn Agostini are residents of the Commonwealth of Pennsylvania residing at 318 Netherington Drive, Broomall, PA 19008; and Plaintiffs Douglas Henegar, individually and as the natural father of Kyle Henegar and Kristopher Henegar and Sharon Henegar, individually and as the Administratrix of the Estates of Kyle Henegar and Kristopher Henegar are residents of the state of Florida and reside at 1383 Rose Court, Melbourne, FL 32935. Plaintiffs are represented by The Wolk Law Firm, which is headquartered at 1710-12 Locust Street, Philadelphia, Pennsylvania. By and through their Philadelphia counsel, Plaintiffs submitted documents to the National Transportation Safety Board for records concerning the crash of a Piper PA-44-180 at West Palm Beach, Florida on November 11, 2010.

2. Defendant, the National Transportation Safety Board (hereinafter "NTSB"), located at 490 L'Enfant Plaza, SW Washington, DC 20594, is an agency of the United States as defined

by 5 U.S.C. §552(f), which has the authority to investigate accidents involving aircraft. It is believed that Defendant NTSB has possession of records to which Plaintiffs seek access.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B). Since this request was made by The Wolk Law Firm, as Plaintiffs' agent, which maintains a principal place of business in Philadelphia County, Philadelphia, venue is also appropriate in this forum pursuant to 5 U.S.C. §552(a)(4)(B).

Nature of the Action

4. This is an action brought under the Freedom of Information Act, 5 U.S.C. §552 (the "Act"), as amended, to enjoin Defendant to retrieve, review, and release the documents which Plaintiffs, by and through their Philadelphia counsel, requested from the NTSB, which are believed to be within its possession and control.

Background

5. On December 5, 2011, Plaintiffs' Philadelphia counsel served the Defendant NTSB with a letter requesting access to certain documents, including but not limited to, a video provided to the NTSB from Galaxy Aviation, under the Freedom of Information Act, 5 U.S.C. §552. (Ex. A).

6. Plaintiffs' request sought records pertaining to the investigation of the crash of a Piper PA-44-180 at West Palm Beach, Florida on November 11, 2010, which took the lives of their children Jordyn Agostini, Kyle Henegar and Kristopher Henegar. The NTSB conducted an investigation of this accident.

7. The Wolk Law Firm followed up to check the status of the request via telephone on February 13, 2012 and February 16, 2012 and by letter on February 29, 2012. (Ex. B).

8. After receiving this letter, on March 7, 2012, Defendant emailed Plaintiffs' counsel attaching the January 10, 2012 letter acknowledging receipt of this request and identified it as FOIA-2012-00063. (Ex. C).

9. The Wolk Law Firm then followed up on this request via email on April 26, 2012 (Ex. D), and via telephone on October 10, 2012 and January 17, 2013.

10. Under the Freedom of Information Act, 5 U.S.C. §552(a)(6)(A)(i), Defendant shall determine whether to comply with the request, and notify the requester of the determination within twenty (20) business days from the date the request was received by the agency.

11. Under the Act, if the agency encounters "unusual" circumstances that require an extended period of time to process the request, the agency must provide the requester with written notice "setting forth the unusual circumstances for such an extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten days." 5 U.S.C. §552(a)(6)(B)(i).

12. As of the date of the filing of this Complaint, after the statutorily mandated deadline has passed, Defendant has not processed Plaintiffs' request, indicated any unusual circumstances for the delay, or indicated a projected date when Plaintiffs' request will be processed.

13. Section 552(a)(6)(C) of the Act states that "[a]ny person making a request to any agency for records ... shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph."

14. Plaintiffs have exhausted the administrative remedies provided by the Freedom of Information Act and agency regulations.

WHEREFORE, Plaintiffs pray that this Court:

1. Order the Defendant to immediately process and release the requested documents, including but not limited to the Galaxy Aviation surveillance video;

2. Award Plaintiffs their costs and reasonable attorney fees as provided by 5 U.S.C. 552(a)(4)(E);
3. Order the Defendant to waive all fees; and
4. Grant to Plaintiffs any other relief as the interests of justice may require.

Respectfully submitted,



Michael S. Miska, Esquire (PA 309501)
THE WOLK LAW FIRM
1710-12 Locust Street
Philadelphia, PA 19103
(215) 545-4220

Dated: August 29, 2013

EXHIBIT “A”

THE WOLK LAW FIRM
AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

December 5, 2011

Arthur Alan Wolk
Philip J. Ford
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

RE: Estates of Jordyn Agostini, Kyle Henegar & Kristopher Henegar
Aircraft: Piper PA-44-180/4496249
Location: West Palm Beach, Florida
Date of Accident: November 11, 2010
NTSB I.D. NO.: ERA11FA054

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA11FA054:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."



National Transportation Safety Board – FOIA
December 5, 2011
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- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- The Galaxy Aviation Surveillance Video;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator, Ralph L. Wilson, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,

MICHAEL S. MISKA

MSM/vg

cc: Regional Director
The NTSB Eastern Region
Ralph L. Wilson, Investigator
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Regional Director, NTSB Florida
8240 NW 52nd Terrace, Suite 418
Doral, FL 33166

EXHIBIT “B”

THE WOLK LAW FIRM
AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

February 29, 2012

Arthur Alan Wolk
Philip J. Ford
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

National Transportation Safety Board
Attention: Office of General Counsel
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

RE: Estates of Jordyn Agostini, Kyle Henegar & Kristopher Henegar
Aircraft: Piper PA-44-180/4496249
Location: West Palm Beach, Florida
Date of Accident: November 11, 2010
NTSB I.D. NO.: ERA11FA054

Dear Sir/Madam:

Our office sent the attached FOIA request on December 5, 2011, requesting, in large part, the entire investigation file of the NTSB for the crash at Palm Beach International Airport on November 11, 2010. Our office represents the families of three of those killed in this tragic crash. As there is pending litigation, it is critical that the information contained in the investigation file be timely released.

After the original FOIA request was submitted, we again called on February 13, 2012 and left a message with the Chief Records Management Division requesting the status of this request, as we had not received any response from any office. Following that call we also submitted a written inquiry about the status of this FOIA request on February 16, 2012.

As of today, we have not heard any response to this request, and have not been given any estimated date of completion. It has been nearly three months with no response from the NTSB or any FOIA office regarding this request. We are well beyond the proscribed twenty day response period for FOIA requests. We are prepared to file a lawsuit to compel the production of these records pursuant to 5 U.S.C. § 552(a)(4)(B), if necessary.



National Transportation Safety Board
Office of General Counsel
February 29, 2012
Page 2

Kindly indicate whether if and when we can expect a response to this request within ten days.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

cc: Robert Scherer, Director
Chief FOIA Officer
Office of the Chief Information Officer
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000



1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

December 5, 2011

Arthur Alan Wolk
Philip J. Ford
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

RE: Estates of Jordyn Agostini, Kyle Henegar & Kristopher Henegar
Aircraft: Piper PA-44-180/4496249
Location: West Palm Beach, Florida
Date of Accident: November 11, 2010
NTSB I.D. NO.: ERA11FA054

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA11FA054:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."



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December 5, 2011
Page 2

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- The Galaxy Aviation Surveillance Video;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator, Ralph L. Wilson, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,

MICHAEL S. MISKA

MSM/vg

cc: Regional Director
The NTSB Eastern Region
Ralph L. Wilson, Investigator
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Regional Director, NTSB Florida
8240 NW 52nd Terrace, Suite 418
Doral, FL 33166

EXHIBIT “C”

From: Vicki Greco
To: ["foia@ntsb.gov"](mailto:foia@ntsb.gov)
Cc: [Mike Miska](#)
Subject: NTSB I.D. No. ERA11FA054
Date: Thursday, February 16, 2012 3:34:00 PM
Attachments: [12-5-11 FOIA Req to NTSB for compl Invest file.pdf](#)

Dear Sir/Madam:

I am attaching a FOIA Request dated December 5, 2011. To date, there has been no response from the NTSB or the NTSB FOIA Requester Service Center.

Kindly advise as to the status of this FOIA request.

If you have any questions, please contact me.

Thank you.

Sincerely,

Vicki Greco

The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103
(215) 545-4220
Fax: (215) 545-5252
vgreco@airlaw.com

From: [Mike Miska](#)
To: foia@ntsb.gov
Cc: [Vicki Greco](#)
Subject: RE: NTSB Acknowledgement Letter[1]
Date: Wednesday, March 07, 2012 11:07:09 AM

I have received the letter. Thank you and I look forward to a response date.

From: FOIA [<mailto:foia@ntsb.gov>]
Sent: Wednesday, March 07, 2012 8:27 AM
To: Mike Miska
Subject: NTSB Acknowledgement Letter[1]

Mr. Miska,

It is our understanding that you did not receive our acknowledgement (sent via e-mail to mmiska@airlaw.com) letter dated January 10, 2011, regarding your December 5, 2011, FOIA request. We are attaching a copy of that correspondence. Please reply directly to this e-mail stating that you received this information.

Thank you,

Tamara Crawford
FOIA Specialist
NTSB FOIA Requester Service Center
(202) 314-6540
(202) 752-6257 (fax)
foia@ntsb.gov

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National Transportation Safety Board
Washington, D.C. 20594

January 10, 2012

Mr. Michael Miska
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: Freedom of Information Act (FOIA) Request
FOIA-2012-00063

Dear Mr. Miska:

This acknowledges receipt of your FOIA request of December 5, 2011, concerning an aviation accident that occurred on November 11, 2010, in West Palm Beach, Florida.

Your request will be processed in accordance with your inquiry. Please refer to the FOIA number listed above to inquire about the status of your request.

NTSB, FOIA Requester Service Center
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594
(202) 314-6540

EXHIBIT “D”

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

April 26, 2012

Arthur Alan Wolk
Philip J. Ford
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

FREEDOM OF INFORMATION ACT REQUEST

Tamara Crawford
FOIA Specialist
NTSB, FOIA Requester Service Center
490 L'Enfant Plaza East, S.W.
Washington, DC 20594

RE: FOIA 2012-00063
Estates of Jordyn Agostini, Kyle Henegar & Kristopher Henegar
Aircraft: Piper PA-44-180/4496249
Location: West Palm Beach, Florida
Date of Accident: November 11, 2010
NTSB I.D. NO.: ERA11FA054

Dear Ms. Crawford:

It has been months since this request and we have yet to receive a response date. Pursuant to the procedures outlined in the Freedom of Information Act, kindly advise when we can expect a response to the attached FOIA response, FOIA-2012-00063.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Enclosures